

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

Docket No. FIFRA-08-2002-07

IN THE MATTER OF:)	
)	
)	
ASARCO Incorporated)	
100 SMELTER ROAD)	
P.O. BOX 1230)	
EAST HELENA, MONTANA 59635)	
)	
dba)	CONSENT AGREEMENT
)	
ASARCO Incorporated)	
1150 N. 7 th Ave.)	
Tucson, AZ 85705)	
)	
)	
Respondent.)	
)	

Complainant, United States Environmental Protection Agency, Region 8 ("EPA"), and ASARCO Incorporated ("Respondent"), by their undersigned representative(s), hereby consent and agree as follows:

I. PRELIMINARY STATEMENT

1. This matter is subject to 40 C.F.R. Part 22. This Consent Agreement is entered into by the parties for the purpose of concluding this matter, as provided for in 40 C.F.R. Section 22.13(b).
2. The facility located at 100 Smelter Road, P.O. Box 1230, East Helena, Montana, 59635 is owned and operated by

Respondent ASARCO Incorporated, a New Jersey corporation,
whose corporate headquarters is located at:

ASARCO Incorporated
2575 East Camelback Road
Suite 500
Phoenix, Arizona 85016-4240

3. The Complaint filed in this matter alleges that Respondent sold or distributed a misbranded or adulterated pesticide, in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. Section 136j(a)(1)(E).

4. This Consent Agreement (hereafter the "Consent Agreement") applies to and is binding upon EPA and upon Respondent, and Respondent's officers, directors, employees, agents, successors and assigns. Any change in the constitution of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Agreement.

5. Respondent waives its right to a hearing on any issue of law or fact set forth in this Pleading.

6. Respondent admits the jurisdictional allegations contained herein and neither admits nor denies the specific factual allegations contained in the Complaint filed in this matter. Respondent asserts that it is not liable in this matter.

II. TERMS OF SETTLEMENT

7. The Complaint filed in this matter proposed a higher penalty assessment than the amount agreed to herein. For good cause shown, and for the purposes of settlement, Complainant agrees to reduce the penalty proposed in the Complaint to FORTY THOUSAND DOLLARS (\$40,000.00).

8. Respondent consents to the issuance of a Final Order that incorporates the terms and conditions of this Consent Agreement, and to pay the civil penalty set forth in Paragraph 9 below.
9. Respondent agrees to pay a penalty in the amount of FORTY THOUSAND DOLLARS (\$40,000.00).
10. Respondent agrees to pay the above stated penalty amount in four (4) installments, in the amounts and sequence described below. Respondent specifically agrees that should it be delinquent with any installment payment, interest due on the delinquent amount shall be calculated from the date of the first installment payment date. Such interest calculation is non-discretionary and required by federal government debt collection procedures.
11. The first penalty installment of \$25,000.00 is due thirty (30) days after issuance of the Final Order in this matter by the Regional Presiding Officer. For purposes of calculating timely payment, the term "issuance" shall mean the date the Final Order is signed by the Regional Presiding Officer. This payment shall be made by remitting a cashier's or certified check for that amount, payable to "Treasurer, United States of America," to:

U. S. EPA, Region 8
(Regional Hearing Clerk)
Mellon Bank
P. O. Box 360859M
Pittsburgh, PA 15251

The second penalty installment of \$5,000 is due on or before
June 1, 2003.

The third penalty installment of \$5,000 is due on or before
December 1, 2003.

The fourth penalty installment of \$5,000 is due **June 1, 2004.**

Respondent shall make each installment payment by remitting a cashier's or certified check for the specified amount, payable to "Treasurer, United States of America," to:

U. S. EPA, Region 8
(Regional Hearing Clerk)
Mellon Bank
P. O. Box 360859M
Pittsburgh, PA 15251

Each payment check shall reference the name and address of Respondent's facility and the EPA docket number of this action. A copy of the check shall be sent simultaneously to:

Tim Osag
Senior Enforcement Coordinator
Technical Enforcement Program (8ENF-T)
U.S. EPA Region VIII
999 18th Street, Suite 500
Denver, Colorado 80202-2466

Respondent may choose to pay off at any time without penalty the remaining unpaid balances due under this agreement (along with any outstanding penalties, interest or other charges due under this agreement). Payment of these amounts in full shall constitute full satisfaction of the terms of this agreement and any Final Order incorporating this agreement.

12. Respondent agrees and consents that if Respondent fails to pay the penalty amount on the due dates set forth in paragraph eleven (11) above, the full penalty amount of \$40,000.00 (FORTY THOUSAND Dollars), or any unpaid balance thereof, shall become due and owing by the Respondent unless EPA in its sole discretion waives all or part of such

acceleration. Furthermore, in the event timely payment is not made, consistent with Paragraph 10 above, interest on the penalty amount or any unpaid balance shall accrue at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. A late payment charge of twenty dollars (\$20.00) shall be imposed after the first 30 days that the payment, or any portion thereof, is overdue, with an additional charge of ten dollars (\$10.00) imposed for each subsequent 30-day period until the payment due is made. In addition, a six percent (6%) per annum penalty shall be applied on any principal amount not paid by the due dates set forth in Paragraph 11 above.

13. This Agreement shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law.
14. This Consent Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete, full and final settlement of the specific violations alleged in the Complaint filed in this matter.
15. Each undersigned representative of the Parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to bind the parties to the terms and conditions of this agreement and to execute and legally bind that party to this agreement.
16. Each party shall bear its own costs and attorneys fees in connection with all issues associated with this agreement.
17. The parties may amend or modify this agreement only if such amendment or modification is made in writing and approved by the Regional Judicial Officer.

IN THE MATTER OF: ASARCO Incorporated, Docket No. FIFRA-
08-2002-07

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
OFFICE OF ENFORCEMENT, COMPLIANCE,
AND ENVIRONMENTAL JUSTICE,

Complainant.

Date: 10/24/02

By: SIGNED
Michael T. Risner, Director
David J. Janik, Supervisory
Enforcement Attorney
Legal Enforcement Program

Date: 10/24/02

By: SIGNED
Connally Mears, Director
Technical Enforcement Program

Date: 10/24/02

By: SIGNED
Dana J. Stotsky
Senior Enforcement Attorney
Legal Enforcement Program
Colorado Bar # 14717
Phone: (303)-312-6905
FAX: (303) 312-6953

ASARCO Incorporated,
Respondent.

Date: 10/22/02

By: SIGNED
Douglas E. McAllister
Vice President, General
Counsel and Secretary

Date: 10/22/02

By: SIGNED
Thomas L. Aldrich
Vice President, Environmental
Affairs

**THIS DOCUMENT WAS FILED WITH THE REGIONAL HEARING CLERK
ON 10/25/02.**